S.B.CIVIL REGULAR FIRST APPEAL NO.2/1982
M/s Suwa Lal Kanhaiya Lal & Ors.
Vs.
M/s Gujrat Oil Trading Company

DATE OF ORDER :22/11/2007

HON'BLE MR. BHANWAROO KHAN J.

Mr.D.D.Thanvi)
Mr.Arvind Shrimali), for the appellants

Mr.Durga Ram for Mr.J.K.Bhaiya, for the respondent

The appellants-defendants have preferred this appeal against the judgment dated 10.12.1981 passed by the District Judge, Udaipur in Civil Original Suit No.84/1978, wherein a decree of Rs.19542.28 including interest has been passed.

Briefly stated the facts of the case are that the plaintiff firm being a partnership firm under the caption of M/s Gujarat Oil Trading Company used to deal in oil & groceries business from whom the defendant firm on 20.1.1977 in Udaipur vide telephonic talk desired to purchase 40 tins of groundnut oil through broker Shri Bhanwar Lal Ladha, which was accepted by the plaintiff and the said 40 tins of oil was sent to defendants with a bill of Rs.68,062.10 at the rate of Rs.85/- per 10 Kg. The defendants by taking the said delivery sent Rs.40,250/, but rest of the due amount of Rs.27,812.10 + cost of empty drums were required to be sent back remained with the defendants. Inspite

of the notice no payment was made. Hence a suit for recovery of Rs.35,000/- was filed against the defendants.

The defendants in their reply admitted to have asked for purchase of 40 tins of groundnut oil, but about the rate they disputed that it was purchased at the rate of Rs.68.50 per 10 Kg. One of the employee Shri Narain Das when brought 40 tins of oil, it was found to be un-consumable for human being and when defendants resisted, Narain Das reduced the rate by Rs.1.50 per Kg. to which the defendants agreed and took the delivery of the tins containing oil sent by the plaintiff. The defendants had already paid Rs.40,250/- and rest of the amount if found to be due was to be paid at Bhilwara, the account has not attained finality and if any amount is found due, they are ready to pay. The empty drums had already been sent to the plaintiff and the plaintiff is not entitled for the cost of empty drums.

On the basis of the pleadings of the parties, the learned trial court framed five issues. The plaintiff in support of the claim, examined himself along with one Narain Das. On behalf of the defendants, two witnesses were examined. The trial court decreed the suit of Rs.17,899.28 + Rs.1634 as interest including cost of empty drums and a due amount of purchased oil.

Both the parties were heard and at the outset it is found that the original record of the case including the statements of the witnesses and all other documents have been weeded out by the trial court while this appeal was pending before this Court. The learned Advocates were requested to furnish copies of the documents as well as the statements to which photostat copies of the statements of the witnesses recorded and documents were submitted by the learned counsels and with the consent of the learned counsels, the photostat copies of the statements and documents were gone through.

The learned counsel for the appellants pleaded that the cost of the empty drums is not to be included in the amount of purchased oil from the plaintiff and there was no such agreement under which they were bound to return the empty drums and failing to do so the cost is to be recovered by the plaintiff. In the contract, it has no where been mentioned that empty drums are required to be returned, failing which the cost of the tin oil was required to be paid. The plaintiff initially fixed the rate at Rs.85/- per 10 Kg. but later on at the time of delivery when the oil was found to un-consumable for human being, the rate was fixed at Rs.68.50 per Kg. and the person, who brought the tin oil also agreed to reduce the rate by Rs.1.50 per Kg. On this, after settling the account the total due amount was paid

and if still there is any amount due, they are ready to pay.

Learned counsel for the plaintiff pleaded that the purchase and delivery of the tin oil is admitted and the plaintiff has himself agreed the rate to be paid by the defendants was Rs.6850 per 10 Kg. Narain Das who took the tin oil to the appellant never agreed to reduce the rate and he was not authorised to do so. The lower court by analysing the evidence produced has rightly and correctly passed the decree. There was also an agreement to return the empty 40 drums, which when defendants failed, the amount of cost of empty drums was also included in the decree.

The contract in between the parties is an admitted fact. The plaintiff himself has admitted in his statement that on the day of the contract the rate of groundnut unfiltered oil was Rs.68.50 per 10 Kg. and accordingly 7750 Kg. oil was sent, which was in 40 drums. Contrary to this, the defendant in their statements stated that the contract to purchase the groundnut oil was of pure oil and not of unfiltered oil. But when Narain Das who brought the delivery, has agreed to reduce the rate of oil by Rs.1.50 per Kg. to which he accepted and took the delivery. The payment of total oil was made. Still if there was any amount due he is ready to pay. Narain Das in his statement has specifically

denied to have any power or authority to reduce the rate of the oil. The total oil delivered to the defendants was 7750 Kg. The learned trial court on the basis of the admitted facts concluded that the 7750 Kg. oil was purchased by the defendants at the rate of Rs.68.50 per 10 Kg. Accordingly, from the total due amount by subtracting what was paid by the defendant, the remaining Rs.13,899.28 was found due against the defendants by the court. There is no illegality committed by the learned lower court in arriving at this conclusion as there is neither any discrepancy in the statements nor any infirmity in arriving at the conclusion, more-so, when both the parties have agreed about the rate and the contract.

Now, the question for Issue No.3 whether plaintiff is entitled for the cost of 40 drums or not, of course there is no specific agreement in between the parties to return back the empty drums to the plaintiff, but the defendants have specifically stated in the statements that empty drums were returned after 7 days of taking the delivery of oil. The plaintiff has also stated in his statement that he has not received the 40 empty drums. From the conduct and statements of both the parties, it is inferred that the empty drums of the oil were to be returned to the plaintiff but the same condition was not complied with. In absence of any specific agreement and statements so recorded,

it can very well be inferred that the empty drums were to be returned to the plaintiff, which was not done. The cost of the drums, as per plaintiff's statement is Rs.100/- per drum and defendants have valued Rs.50 as cost of per drum. The another witness, P.W.2 Narain Das has also valued Rs105-110 as cost of per drum. The witness D.W.2 Mohan Lal has stated that he is not aware about the cost of the empty drum. As both the parties have led evidence about the cost of empty drums from the evidence so recorded the learned trial court valued Rs.100/- per empty drum and there is not any illegality in arriving at the conclusion by looking when evidence tendered by both the parties, so the said issue was also rightly decided in favour of the plaintiff while assessing the cost of empty drum as Rs.100/- per drum.

From the foregoing conclusions, the appeal lack merit and deserves to be dismissed.

Consequently, the appeal stands dismissed with no order as to costs.

(BHANWAROO KHAN) J.

BKS/-